Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/28937/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 1 April 2015	**On 9 April 2015**

Before

Deputy Upper Tribunal Judge Pickup

Between

Secretary of State for the Home Department
[No anonymity direction made]

Appellant

and

Bertin Tuma Tsonewa

Claimant

Representation:
For the claimant: Mr J Trussler, instructed by Law Klinik LLP
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is the resumed hearing of the appeal of the Secretary of State against the decision of First-tier Tribunal Judge Kershaw promulgated 6.10.14, allowing the claimant's appeal on the papers against the decision of the Secretary of State, dated 23.6.14, to refuse his application for an EEA residence card, pursuant to the Immigration (EEA) Regulations 2006, on the basis of being the family member (spouse) of an EEA national exercising Treaty rights in the UK, namely Melissa Mendes Rodrigues, a French national.

2. First-tier Tribunal Judge Brunnen having granted permission to the Secretary of State to appeal on 20.11.14, the matter came before Deputy Upper Tribunal Judge Hanbury on 9.1.15.

3. In the error of law decision Judge Hanbury found a material error of law in the decision of the First-tier Tribunal in that there was no evidence before the Tribunal upon which the judge could have found that the marriage entered into by proxy in Cameroon on 10.12.10 was recognised as valid in French law, pursuant to Kareem [2014] UKUT 24. The Secretary of State maintained her challenge that the marriage was not in any event recognised in accordance with Cameroon law.

4. Consequently, Judge Hanbury set the decision of the First-tier Tribunal aside and adjourned for a resumed hearing in the Upper Tribunal to enable the claimant to present evidence that he and Ms Rodriguez were married in accordance with both Cameroon and French law.

5. By order made on 31.3.15, in order to avoid unnecessary delay, the matter has been transferred to myself for the purpose of remaking the decision in the appeal.

6. I note that Judge Hanbury made a number of directions for the future conduct of the appeal. These included that “Not later than the seven days before the adjourned hearing the (claimant) is to file witness statements of both the (claimant) and the sponsor exhibiting any documents relevant to the issues identified, that is the validity of the marriage under Cameroon or French law.” He also directed that the appellant and the sponsor attend the hearing, though such a direction is not enforceable.

7. Neither the claimant nor the sponsor attended the hearing. No further evidence has been received by the Upper Tribunal in compliance with the directions and there does not appear to have been any acknowledgement of the error of law decision or the notice of adjourned hearing, sent to both the claimant and his legal representatives on 15.2.15.

8. Mr Trussler asked for time to investigate why there had been no response to the directions and to clarify whether the claimant or sponsor intended to attend. I thus put the matter back in the list. When the matter was called back on it was made clear that neither the claimant nor the sponsor were going to attend. Mr Trussler had with him photocopies of two documents that do not appear to have been before the First-tier Tribunal namely:

   (a) A short witness statement from the claimant, asserting that the marriage is valid by the law of Cameroon and France, and that the marriage had been “legalised” by the Consulate General of the French Embassy in Cameroon on 7.1.15, through instruction of counsel in Cameroon. That was some 8 months after the refusal decision;

(b) What was purported to be a copy of the marriage certificate, allegedly stamped by the Consulate General on 7.1.15.

9. Neither the copy marriage certificate nor the stamps of the Consulate General were translated. The marriage certificate may or may not be the same document as previously submitted; it is difficult to tell. In the further absence of the claimant or sponsor to explain these documents I am not satisfied that they are what they claim to be. Further, it does not necessarily follow that because the Consulate General has stamped the document, in the absence of the parties to the marriage, more than 4 years after the event, that the marriage is demonstrated to be valid by French law. The stamp certainly does not assert that it is valid. It remains something of a mystery as to how the Consulate General could, in the absence of the parties, validate a marriage certificate issued more than 4 years earlier.

10. Mr Trussler, doing the best he could for the claimant, made an application for a further adjournment to obtain the necessary evidence. However, in the light of the paucity of evidence and given that Judge Hanbury had already allowed an adjournment for what has turned out to be several months for that very purpose, I did not consider it in the public interest to further delay the resolution of this matter. I further note that on the basis the claimant asserts that he meets the requirements of the regulations it remains open to the claimant to make a further application under the Immigration (EEA) Regulations 2006.
11. It is not clear from the witness statements of the claimant and the sponsor where they were when the marriage was entered into. The way it is worded, it is possible to read it as though the marriage was performed in the UK, or in Cameroon, or in France. The claimant's skeleton argument suggests that the marriage was performed in Cameroon before both parties with their witnesses and was not a proxy marriage, as has been suggested in the refusal decision.
12. The Secretary of State was suspicious as to whether this was a genuine marriage and whether it was in fact a proxy marriage, which does not seem to be validly entered into in the circumstances of this case. However, Judge Kershaw was satisfied that the burden of proof was discharged by the production of the marriage certificate and the document of authenticity, which states that the marriage was celebrated in the presence of both parties. I note in the witness statements they both say that the day after the wedding they came to the UK for their honeymoon. On the face of the documents, there is sufficient evidence to demonstrate that they were present and thus that the marriage is valid and I so find.
13. However, it remains the case that the claimant has to demonstrate that the marriage was also valid by French law, Ms Rodriguez being a French national. I find for the reasons set out above that the evidence necessary to meet that requirement is woefully lacking. In particular, I am not satisfied that the purported validation by the Consulate General is evidence of validity of the marriage in French law.
14. In the circumstances, it is not necessary to resolve whether the parties also meet the requirements of regulation 8.

15. In the light of the above, and in the absence of both claimant and sponsor, or any cogent evidence of any article 8 claim, which was not in any event pursued by Mr Trussler, there was no prospect of success whatsoever the appeal being allowed on article 8 private or family life grounds either under Appendix FM or paragraph 276ADE, or outside the Rules on the basis of article 8 ECHR. Given that it remains open to make a further application, I would have found in the application of the Razgar steps that the decision was entirely proportionate.

Conclusion & Decision:

16. For the reasons set out herein, I find that the claimant has failed to demonstrate that the marriage is valid and thus he cannot meet the requirements of the Immigration (EEA) Regulations 2006.

The appeal of the claimant is remade by its dismissal.

Signed

Deputy Upper Tribunal Judge Pickup

Dated **9 June 2015**

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup

Dated **9 June 2015**